



Compressed Transcript of the Testimony of  
**GEORGE T. HAYES, M.D., 4/30/20**

**Case:** Kennedy v. City of Philadelphia, et al.

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Kennedy v. City of Philadelphia, et al.

GEORGE T. HAYES, M.D., 4/30/20

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p style="text-align: center;">---</p> <p>DAWN KENNEDY, : CIVIL ACTION</p> <p>Plaintiff, :</p> <p>VS. :</p> <p>CITY OF PHILADELPHIA, : et al., :</p> <p>Defendant. : NO. 20-CV-0395</p> <p style="text-align: center;">---</p> <p>Teleconference deposition of GEORGE T. HAYES, M.D., taken on Thursday, April 30, 2020, beginning at approximately 12:00 p.m., before Robin Frattali, Registered Professional Reporter and Notary Public.</p> <p style="text-align: center;">---</p> <p>SUMMIT COURT REPORTING, INC. Certified Court Reporters and Videographers 1500 Walnut Street, Suite 1610 Philadelphia, Pennsylvania 19102 424 Fleming Pike, Hammonton, New Jersey 08037 (215) 985-2400 * (800) 447-8648 * (609) 567-3315 www.summitreporting.com</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p style="text-align: center;">---</p> <table border="0"> <tr> <td>WITNESS:</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>GEORGE T. HAYES, M.D.</td> <td></td> </tr> <tr> <td>EXAMINATION</td> <td></td> </tr> <tr> <td>By Mr. Berlin</td> <td style="text-align: right;">5</td> </tr> <tr> <td>By Ms. Allen</td> <td style="text-align: right;">25</td> </tr> </table> <p style="text-align: center;">EXHIBITS</p> <table border="0"> <tr> <td></td> <td style="text-align: right;">PAGE FIRST</td> </tr> <tr> <td>EXHIBIT NO.</td> <td style="text-align: right;">DESCRIPTION REFERENCED</td> </tr> </table> <p style="text-align: center;">(No exhibits were marked.)</p>	WITNESS:	PAGE	GEORGE T. HAYES, M.D.		EXAMINATION		By Mr. Berlin	5	By Ms. Allen	25		PAGE FIRST	EXHIBIT NO.	DESCRIPTION REFERENCED
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 WEISBERG LAW, P.C.</p> <p>4 BY: DAVID A. BERLIN, ESQUIRE</p> <p>5 7 South Morton Avenue</p> <p>6 Morton, Pennsylvania 19070</p> <p>7 (610) 690-0801</p> <p>8 dberlin@weisberglawoffices.com</p> <p>9 Counsel for Plaintiff</p> <p>10 (Present via Teleconference)</p> <p>11</p> <p>12 CITY OF PHILADELPHIA LAW DEPARTMENT</p> <p>13 BY: TIFFANY R. ALLEN, ESQUIRE</p> <p>14 Assistant City Solicitor</p> <p>15 Labor and Employment Unit</p> <p>16 One Parkway Building</p> <p>17 1515 Arch Street</p> <p>18 16th Floor</p> <p>19 Philadelphia, Pennsylvania 19102</p> <p>20 (267) 626-9016 (cell)</p> <p>21 tiffany.r.allen@phila.gov</p> <p>22 Counsel for Defendant</p> <p>23 (Present via Teleconference)</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">DEPOSITION SUPPORT INDEX</p> <p>1</p> <p>2</p> <p>3 DIRECTIONS NOT TO ANSWER:</p> <p>4 PAGES: None</p> <p>5</p> <p>6 REQUESTS FOR DOCUMENTS OR INFORMATION:</p> <p>7 PAGES: None</p> <p>8</p> <p>9 STIPULATIONS AND/OR STATEMENTS:</p> <p>10 PAGES: 5</p> <p>11</p> <p>12 MARKED QUESTIONS:</p> <p>13 PAGES: None</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>														

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<p style="text-align: right;">Page 5</p> <p>1 THE REPORTER: Usual</p> <p>2 stipulations?</p> <p>3 MR. BERLIN: Yes.</p> <p>4 MS. ALLEN: Yes.</p> <p>5 - - -</p> <p>6 (By agreement of counsel, the</p> <p>7 reading, signing, sealing, certification</p> <p>8 and filing are waived; and all objections,</p> <p>9 except as to the form of the question, are</p> <p>10 reserved until the time of trial.)</p> <p>11 - - -</p> <p>12 GEORGE T. HAYES, M.D., having</p> <p>13 been first duly sworn to tell the truth, was</p> <p>14 examined and testified as follows:</p> <p>15 - - -</p> <p>16 EXAMINATION</p> <p>17 - - -</p> <p>18 BY MR. BERLIN:</p> <p>19 Q. Okay. Dr. Hayes, my name is David</p> <p>20 Berlin. I'm the attorney for the plaintiff, Dawn</p> <p>21 Kennedy. We met a few months ago when I had a</p> <p>22 deposition with you for another case, so I know</p> <p>23 you're familiar with the process. I do appreciate</p> <p>24 your time.</p>	<p style="text-align: right;">Page 7</p> <p>1 make her objection, and then you can go ahead and</p> <p>2 answer my question if you understand it. Okay?</p> <p>3 A. Yes.</p> <p>4 Q. All right. So let's get started. And</p> <p>5 again, some of this is going to be the same as</p> <p>6 what happened in the last deposition, but I just</p> <p>7 have to do it again for the record, so just bear</p> <p>8 with me.</p> <p>9 How long have you worked for</p> <p>10 the City of Philadelphia?</p> <p>11 A. For 35 years.</p> <p>12 Q. And what's your current title?</p> <p>13 A. Medical Director of Employee Medical</p> <p>14 Services.</p> <p>15 Q. And how long have you had that title?</p> <p>16 A. For the entire time.</p> <p>17 Q. Okay. Do you know how the</p> <p>18 Philadelphia Police Department selects what types</p> <p>19 of drug tests to administer on the -- on its</p> <p>20 police officers?</p> <p>21 A. Yes.</p> <p>22 Q. How -- what's the process? How is it</p> <p>23 done?</p> <p>24 A. It really depends upon whether you're</p>
<p style="text-align: right;">Page 6</p> <p>1 A. Exactly.</p> <p>2 Q. Yes. So I'll just give the basic</p> <p>3 instructions and then we'll get into it.</p> <p>4 First all, do you understand</p> <p>5 that you're under oath today?</p> <p>6 A. Yes.</p> <p>7 Q. Do you understand that you have an</p> <p>8 obligation to tell the truth?</p> <p>9 A. Yes.</p> <p>10 Q. Are you under the influence of any</p> <p>11 medications that could affect your ability to</p> <p>12 testify?</p> <p>13 A. No.</p> <p>14 Q. As you know, because we're on the</p> <p>15 phone, if you can't hear me, just let me know, and</p> <p>16 also, I would ask that you let me just give my</p> <p>17 full question, and then I'm going to pause, and</p> <p>18 I'll give you a full amount of time to respond.</p> <p>19 Okay?</p> <p>20 A. Yes.</p> <p>21 Q. At some point during the deposition,</p> <p>22 it's possible that the opposing counsel might</p> <p>23 object. That's totally fine. When that happens,</p> <p>24 you and I can both stop speaking, we'll let her</p>	<p style="text-align: right;">Page 8</p> <p>1 a full-time police officer versus whether you are</p> <p>2 an applicant. Which category would you like for</p> <p>3 me to address?</p> <p>4 Q. Well, for example, how does the City</p> <p>5 of Philadelphia decide the types of drug tests to</p> <p>6 use? I know there's different kinds, like</p> <p>7 urinalysis or a hair test. How does the City pick</p> <p>8 the test?</p> <p>9 A. I can't tell you how exactly they pick</p> <p>10 the test. I can only say that over time the urine</p> <p>11 was the initial test that was done, and at some</p> <p>12 point a number of years ago, and I don't know</p> <p>13 exactly how long ago, it was decided that hair</p> <p>14 testing would be done as well, but the specific</p> <p>15 how they did that, I can't tell you other than</p> <p>16 that it was a consensus based on probably multiple</p> <p>17 individuals.</p> <p>18 Q. Do you know who made the decision to</p> <p>19 start using hair tests?</p> <p>20 A. No.</p> <p>21 Q. Were you involved in the decision?</p> <p>22 A. Not the decision, itself. We -- I was</p> <p>23 involved in the -- carrying that process out to --</p> <p>24 the evaluation process of the hair.</p>

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<p>1 Q. Is there like a working group or a</p> <p>2 committee that decides -- like that does the</p> <p>3 evaluation?</p> <p>4 A. Could you ask me that in a little</p> <p>5 greater detail?</p> <p>6 Q. Yeah.</p> <p>7 Is there some sort of committee</p> <p>8 that sets the best practices for testing, or</p> <p>9 decides what test to use?</p> <p>10 A. I'm not aware of a definitive</p> <p>11 committee. I know that it's carried out -- the</p> <p>12 action, itself, of doing the physical hair testing</p> <p>13 is carried out by the Internal Affairs unit.</p> <p>14 There is a unit within the Police Department that</p> <p>15 does make these decisions, or decides on the</p> <p>16 mechanisms of how it's done and who will do it,</p> <p>17 but I'm not -- I don't interact with those people.</p> <p>18 Q. Just to be clear, I don't want to know</p> <p>19 anything that you've talked about with the City's</p> <p>20 attorneys, that's attorney-client privileged</p> <p>21 information, but besides them, have you ever had</p> <p>22 any discussions with people that work for the City</p> <p>23 of Philadelphia about whether or not the hair drug</p> <p>24 test has any kind of discriminatory impact on</p>	<p>1 dark-haired person, when tested at the same point</p> <p>2 after exposure, will have a higher level of</p> <p>3 whatever drug it is. So that's been a historical</p> <p>4 fact.</p> <p>5 And there's also a historical</p> <p>6 fact that because of color of most individuals who</p> <p>7 are black, the hair color and the hair thickness,</p> <p>8 that they fall into that category as well.</p> <p>9 Q. How long have you known about that</p> <p>10 concept?</p> <p>11 A. Well, it's -- it's been something</p> <p>12 that's been around for a long period of time, and</p> <p>13 it's something that I think that most</p> <p>14 toxicologists are aware of.</p> <p>15 And historically, it's -- at</p> <p>16 least from the Medical Review Officer's point of</p> <p>17 view, if we do commercial driver's license</p> <p>18 testing as a part of that program, hair has not</p> <p>19 been included in that process for testing</p> <p>20 because the question is they didn't want to get</p> <p>21 into an issue that looks at some bias or --</p> <p>22 regarding hair color or that would offer an issue.</p> <p>23 So therefore, hair testing has</p> <p>24 not yet been incorporated into the Federal program</p>
Page 10	Page 12
<p>1 African-Americans?</p> <p>2 A. No.</p> <p>3 Q. Have you ever heard of that concept</p> <p>4 before?</p> <p>5 A. Yes.</p> <p>6 Q. When did you hear about that concept?</p> <p>7 A. It had to be at least I would say 15</p> <p>8 years ago.</p> <p>9 Q. And how did you learn about that?</p> <p>10 A. Actually, there have been some studies</p> <p>11 done that point to the issue of hair being</p> <p>12 something that may give you some partial or some</p> <p>13 different results in different hair, colors as</p> <p>14 well as hair thickness. So they've done studies</p> <p>15 historically.</p> <p>16 I was recently at a Medical</p> <p>17 Review Officer recertification and that issue came</p> <p>18 up, and it's the same information that has been</p> <p>19 around for the last 15 years, and that is that if</p> <p>20 you expose the same individual -- if you're doing</p> <p>21 the testing process to the same level of drug, be</p> <p>22 it marijuana or something else, and you test that</p> <p>23 person's hair that has blond hair versus red hair</p> <p>24 versus brunette hair or very dark hair, that the</p>	<p>1 for workplace drug testing.</p> <p>2 Q. Okay. And I appreciate that</p> <p>3 information, but my question is just simply how</p> <p>4 long have you known about the concept.</p> <p>5 A. Oh, I'm sorry. I thought -- okay.</p> <p>6 Please forgive me.</p> <p>7 Again, 15 years.</p> <p>8 Q. Okay. And is there anyone at the</p> <p>9 City, that works for the City, that's responsible</p> <p>10 for examining whether or not the hair drug test is</p> <p>11 the best practice, or could potentially have a</p> <p>12 discriminatory impact?</p> <p>13 A. Not that I'm aware of. I'm certain</p> <p>14 that it really comes from the level of the</p> <p>15 Commissioner, but I can't tell you who those</p> <p>16 parties would be or who those parties are.</p> <p>17 Q. If you -- I'm not asking for a</p> <p>18 conclusion, I'm just saying if you did learn that</p> <p>19 there was a discriminatory impact, I'm not saying</p> <p>20 that you have to agree with that, I'm saying if</p> <p>21 you did learn that, would it be part of your role</p> <p>22 to notify the City?</p> <p>23 A. Well, yes, it would be, and I think</p> <p>24 that what I just related to you is something that</p>

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<p style="text-align: right;">Page 13</p> <p>1 has -- people have been aware of, toxicologists  2 have been aware of that, and I think that that's  3 something that -- however, it has not been so  4 significant from the point of view of those who  5 had decided that, that it was an issue, that would  6 override or stop them from doing the testing  7 process.  8 Q. Are you a toxicologist, by the way?  9 A. No.  10 Q. Okay. Does the City of Philadelphia  11 employ toxicologists?  12 A. Not directly. Usually -- I mean, what  13 happens is that for urine or hair testing, the lab  14 that does the testing, itself, will supply  15 toxicologists if there are questions. So if I  16 have a question regarding hair or urine,  17 there's -- I would contact the toxicologist from  18 either lab that's actively doing that test for us  19 and question them.  20 Q. Do you think you're qualified to know  21 whether the hair drug test has a discriminatory  22 impact?  23 A. No, I do not, to be very honest with  24 you. I can only recite to you what I recited</p>	<p style="text-align: right;">Page 15</p> <p>1 A. Okay. Again, I'm -- I can't tell you  2 how. I can only tell you that within the hiring  3 process, and within the internal workings of the  4 Police Department, which I am really not familiar  5 with, I don't -- I really don't interact directly  6 with those decision makers, but they would, I'm  7 certain, look at the most recent data to decide if  8 this is something that's worthwhile, or are they  9 willing to take a chance, based on their concerns  10 regarding drugs, whether there is any validity,  11 and if that validity is something that has stood  12 up.  13 I don't know all the legal  14 interactions or ramifications of drug testing done  15 throughout the country, but undoubtedly, this  16 issue of hair color, texture, has been something  17 that's been on the -- on the plate in regard to  18 hair testing from the very onset.  19 Q. Okay. What is your specific role with  20 the hair and drug testing? For example, when an  21 officer has a positive test, are you involved in  22 that?  23 A. Yes.  24 Q. So what is your involvement?</p>
<p style="text-align: right;">Page 14</p> <p>1 previously based on information that's been  2 related to me from the experts.  3 Q. When information has been related to  4 you, did you ever convey that information to  5 decision makers at the City about the test?  6 A. The answer to that is no, because as I  7 said initially, I was not actively a part of that  8 process of deciding to do hair testing.  9 Q. The practice or policy of doing hair  10 testing by the City, is that ever revisited from  11 time to time?  12 A. I can't answer that honestly because I  13 know that questions have come up, but I don't know  14 if there's a mechanism for it to periodically be  15 evaluated. I think that that is something that  16 would be an appropriate thing to be done  17 periodically, but again, that's decided from  18 usually the level of the Commissioner and those  19 people who are directing her accordingly. Him or  20 her.  21 Q. Okay. I guess I'm just trying to  22 learn a little bit about the process. I mean, how  23 would the Commissioner -- if you know, how would  24 the Commissioner learn about this kind of issue?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. If an officer -- Internal Affairs,  2 actually, for the Police Department does all the  3 hair testing. The individuals in that group that  4 do the testing are certified for doing the testing  5 process.  6 What happens, if a test comes  7 back positive, they bring that result to me. We  8 have a Sergeant Williams, who works out of our  9 office, from Internal Affairs. I would review the  10 data and look at the results, have the officer  11 brought in, who would sit down with the Sergeant  12 and question that person regarding potential  13 exposure, be it environmental exposure or taking  14 medications, things of that nature, that might  15 give rise to the reason why there is a positive  16 drug test on the hair, whether there's been an  17 environmental exposure say at work or not at work,  18 and as well as medications.  19 One of the things that you  20 question now also is, because of the use of  21 medical marijuana, whether they might be using a  22 drug as a medical marijuana agent, and it's been  23 decided that police officers know that medical  24 marijuana is not a reasonable acceptance for</p>

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<p style="text-align: right;">Page 17</p> <p>1 having a positive urine or hair sample.</p> <p>2 Q. Okay. Well, I'll represent to you</p> <p>3 that for this case, Dawn Kennedy had her</p> <p>4 deposition yesterday, and one of the things she</p> <p>5 said, she represented at her deposition -- or I'll</p> <p>6 represent that she said was that Sergeant Williams</p> <p>7 told her she can have a re-test but that the</p> <p>8 re-test wouldn't change the City's decision to</p> <p>9 terminate her.</p> <p>10 Do you know anything about</p> <p>11 that?</p> <p>12 A. No, I don't know anything about that</p> <p>13 specifically. I do know that for hair testing --</p> <p>14 no, I really don't know anything.</p> <p>15 I know for urine we do a second</p> <p>16 sample, an A and B split, depending upon the --</p> <p>17 the amount of hair that a person might have, and</p> <p>18 it's collected usually -- I was of the impression,</p> <p>19 and I might be wrong, that all the hair that's</p> <p>20 collected is tested, and there's no second sample</p> <p>21 to have available.</p> <p>22 The second sample would be the</p> <p>23 sample that you would test or re-test for urine,</p> <p>24 but I'm not clear whether that's true for hair or</p>	<p style="text-align: right;">Page 19</p> <p>1 I've looked up, that you may have with CBD. If</p> <p>2 you use a CBD product, be it a hair product, or</p> <p>3 oil intake product, or a liniment or something,</p> <p>4 there's a likelihood that you may get a</p> <p>5 cross-reactivity with CBD.</p> <p>6 Even in those cases, those</p> <p>7 cases historically have been, from the</p> <p>8 department's point of view -- because there's a</p> <p>9 directive, I believe, that says you can't use</p> <p>10 products that might potentially have THC,</p> <p>11 tetrahydrocannabinol, that those are not</p> <p>12 acceptable reasons for having a positive urine.</p> <p>13 That's been historically Internal Affairs and the</p> <p>14 Police Department's take on that.</p> <p>15 Q. Do you know if you told Dawn Kennedy</p> <p>16 when you met her whether or not you thought that</p> <p>17 the test was accurate or valid?</p> <p>18 A. Well, I can't tell you specifically</p> <p>19 about Ms. Kennedy, but I can say to you that my</p> <p>20 impression is that the test, itself, from a</p> <p>21 chemical and toxicology -- toxicological point of</p> <p>22 view, is valid.</p> <p>23 I mean, I believe -- I don't</p> <p>24 believe that there is anything that's done</p>
<p style="text-align: right;">Page 18</p> <p>1 not.</p> <p>2 Q. Do you recall Dawn Kennedy's case</p> <p>3 specifically?</p> <p>4 A. I've read my notes, and I did meet</p> <p>5 with her on 3/27 with Sergeant Williams, but I</p> <p>6 can't remember her case in any greater detail.</p> <p>7 Q. Do you recall if Dawn mentioned that</p> <p>8 she was using certain hair products?</p> <p>9 A. Yes.</p> <p>10 Q. Did that matter to you?</p> <p>11 A. Well, there are no hair products, that</p> <p>12 I'm aware of, that might give rise to a positive</p> <p>13 hair from marijuana.</p> <p>14 Now, we quite often run across</p> <p>15 this situation where a person might --</p> <p>16 particularly today, might be taking CBD oil, and</p> <p>17 CBD oil, you can use it on your hair, you can use</p> <p>18 products that have hemp, because CBD oil comes</p> <p>19 from hemp, and there can be -- and CBD oil has</p> <p>20 cannabinoids in it, because CBD is a -- the active</p> <p>21 component that we -- supposedly use is cannabinol.</p> <p>22 There are hundreds of types of</p> <p>23 cannabinols, and there's a cross-reactivity, about</p> <p>24 a 13 percent cross-reactivity, when we've -- when</p>	<p style="text-align: right;">Page 20</p> <p>1 intentionally to move one way or another, but</p> <p>2 it -- I think that when you look historically at</p> <p>3 hair testing, there have always been questions of</p> <p>4 whether there may be some bias in one way or</p> <p>5 another.</p> <p>6 Q. Well, let me clarify my question,</p> <p>7 then. Do you know if you told Dawn Kennedy that</p> <p>8 you thought there was anything valid or invalid</p> <p>9 about her specific test?</p> <p>10 A. Not that I'm aware of, and that would</p> <p>11 not be something that -- that I would historically</p> <p>12 see, but I would -- as I'm talking to you, I would</p> <p>13 say the same thing to the patient, the things that</p> <p>14 I've stated to you.</p> <p>15 Q. Okay. I'll just make a</p> <p>16 representation, and this is -- I'm not -- it's not</p> <p>17 word for word, I'm paraphrasing, but my memory is</p> <p>18 that yesterday she said something like you told</p> <p>19 her that you thought her particular test was, I'm</p> <p>20 just quoting, like she said BS.</p> <p>21 Do you remember anything like</p> <p>22 that?</p> <p>23 A. I don't think I would say that. When</p> <p>24 our meeting was done, actually, or anybody, I</p>

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<p style="text-align: right;">Page 21</p> <p>1 don't normally respond in that way, and I would</p> <p>2 not respond in that way because I know that the</p> <p>3 test, itself, is valid, and actually, Sergeant</p> <p>4 Williams is with me when I'm meeting with her, so</p> <p>5 that's not my normal way of responding.</p> <p>6 Q. Is there anything in the documents</p> <p>7 you've looked at for Dawn Kennedy that make you</p> <p>8 question her particular test?</p> <p>9 A. Not the specifics of the test, no, not</p> <p>10 at all. I think that it was, based on what I can</p> <p>11 see, the collection process, which we call the</p> <p>12 chain of custody, is intact. So I can't say</p> <p>13 there's any, you know, variance as far as that's</p> <p>14 concerned.</p> <p>15 Q. Did you ever learn whether Dawn was</p> <p>16 around marijuana at times with her job, like there</p> <p>17 was, you know, for example, marijuana in the</p> <p>18 police station a lot and things like that, not</p> <p>19 because they were using it recreationally, but</p> <p>20 from drug arrests?</p> <p>21 A. No, I'm not aware. And that's</p> <p>22 something that at least the labs -- one of the</p> <p>23 things that you talk about when you do hair</p> <p>24 testing is the washing of the product, itself,</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Because I'm not a toxicologist, I can</p> <p>2 say I honestly don't know. I have no reason for</p> <p>3 offering an opinion in regards to that.</p> <p>4 I can only tell you that --</p> <p>5 that environmental exposure is something that</p> <p>6 would concern me, and particularly now because</p> <p>7 with vaping of THC products you can be exposed to</p> <p>8 marijuana in the environment and not even be</p> <p>9 aware, because vaping THC doesn't give you the</p> <p>10 same smell exposure or -- you know, that smoking</p> <p>11 marijuana, itself, does.</p> <p>12 So when you vape the chemical,</p> <p>13 and a lot of -- medically you are able to collect</p> <p>14 that now -- in the State of Pennsylvania you're</p> <p>15 able to do that, you might be around someone</p> <p>16 smoking marijuana and not be aware of that.</p> <p>17 Q. Do you know if the City of</p> <p>18 Philadelphia or the Police Department, the</p> <p>19 Philadelphia Police Department, has considered</p> <p>20 using an alternative test that would potentially</p> <p>21 not have a discriminatory impact?</p> <p>22 A. No. I mean, I -- you know, there</p> <p>23 is -- there's saliva testing. There's urine</p> <p>24 testing. Their's hair testing. The thing about</p>
<p style="text-align: right;">Page 22</p> <p>1 that's another issue, whether certain hairs,</p> <p>2 because of their -- their nature or because of</p> <p>3 their texture, whether it releases or does not</p> <p>4 release potential environmental exposure to a</p> <p>5 chemical.</p> <p>6 So the washing process</p> <p>7 historically has been a question, whether people</p> <p>8 with darker hair or people with a certain quality</p> <p>9 hair, thicker hair, whether their hair samples</p> <p>10 might be positive for longer periods of time, or</p> <p>11 there may be external factors involved with a</p> <p>12 positive sample.</p> <p>13 That's something that has been</p> <p>14 thought about and has historically been looked at,</p> <p>15 but it's something that has not been a reason why</p> <p>16 a hair sample is deemed not acceptable.</p> <p>17 Q. If Dawn was around marijuana a lot</p> <p>18 through her job, would that be taken into account</p> <p>19 in her case that we're here for?</p> <p>20 A. No.</p> <p>21 Q. And I heard your previous answer, I</p> <p>22 don't mean to disregard it or anything, but if</p> <p>23 Dawn was around marijuana a lot through her job,</p> <p>24 would that have mattered?</p>	<p style="text-align: right;">Page 24</p> <p>1 hair, hair gives you a longer window of potential</p> <p>2 exposure. That can be a positive thing if your</p> <p>3 employee -- you want to see if there's some</p> <p>4 historical event, or it can be a negative thing if</p> <p>5 you are in a situation where someone may have been</p> <p>6 accidentally exposed to a product, and so the</p> <p>7 window of time, it runs, and it depends on what</p> <p>8 the party is looking for.</p> <p>9 When you're looking at</p> <p>10 applicants, I think that it's something that --</p> <p>11 and I think it's something that's good because you</p> <p>12 can look back and see what -- it gives you a</p> <p>13 potential 90-day period of time, or sometimes</p> <p>14 longer if it's body hair, a window of potential</p> <p>15 exposure, but that's all I can say. I can't tell</p> <p>16 you whether it's something that should or should</p> <p>17 not be done.</p> <p>18 Q. Just give me one second.</p> <p>19 A. Take your time.</p> <p>20 Q. Do you know whether Dawn Kennedy was</p> <p>21 offered the opportunity to resign instead of being</p> <p>22 terminated?</p> <p>23 A. I don't know that.</p> <p>24 Q. Do you know if it's common when</p>

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<p>1 Philadelphia police officers test positive for</p> <p>2 drugs that they are given some sort of window</p> <p>3 where they can resign or otherwise be terminated</p> <p>4 within a certain short period of time?</p> <p>5 A. Honestly, again, that's an Internal</p> <p>6 Affairs action, and I'm -- really am not familiar</p> <p>7 with that at all.</p> <p>8 Q. One sec.</p> <p>9 MR. BERLIN: All right. That's</p> <p>10 all I have, but the opposing counsel might</p> <p>11 have something for you.</p> <p>12 BY MS. ALLEN:</p> <p>13 Q. Hi, Dr. Hayes.</p> <p>14 A. Yes.</p> <p>15 Q. Just some really quick questions. I</p> <p>16 wanted to go back to when you were asked about the</p> <p>17 decision-making process to use hair tests.</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if Philadelphia police</p> <p>20 officers are under a contract?</p> <p>21 A. Yes. There is a union contract that</p> <p>22 the Philadelphia police officers work under, yes.</p> <p>23 Q. And do you know if hair testing or</p> <p>24 hair testing procedures are agreed upon by the</p>	<p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, ROBIN FRATTALI, Registered</p> <p>4 Professional Reporter, do hereby certify that the</p> <p>5 proceedings, evidence, and objections noted are</p> <p>6 contained fully and accurately in the notes taken</p> <p>7 by me of the preceding deposition, and that this</p> <p>8 copy is a correct transcript of the same.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 ROBIN FRATTALI</p> <p>15 Registered Professional</p> <p>16 Reporter - Notary Public</p> <p>17</p> <p>18</p> <p>19 The foregoing certification does not</p> <p>20 apply to any reproduction of the same by any</p> <p>21 means, unless under the direct control and/or</p> <p>22 supervision of the certifying reporter.</p> <p>23</p> <p>24</p>
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<p>1 union and members of the City or Police</p> <p>2 Department?</p> <p>3 A. I know there are certain directives</p> <p>4 that -- that relate to urine and hair, but I don't</p> <p>5 know if that's a part of the contractual process.</p> <p>6 I really don't.</p> <p>7 MS. ALLEN: Okay. Thank you.</p> <p>8 That's all I had.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 MR. BERLIN: Thanks for your</p> <p>11 time, Dr. Hayes.</p> <p>12</p> <p>13</p> <p>14 - - -</p> <p>15</p> <p>16 (Whereupon, at 12:30 p.m., the</p> <p>17 witness was excused and the deposition was</p> <p>18 concluded.)</p> <p>19</p> <p>20 - - -</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	

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